

HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.5982 of 2016

ORDER:

The petitioners are A.1 to A.6 in C.C.No.1301 of 2006 on the file of III Addl.Chief Metropolitan Magistrate, Hyderabad(for short, 'the ACMM'), outcome of Cr.No.824 of 2004 of S.R.Nagar Police station, registered for the offences punishable u/ sec.147, 448, 427 and 323 IPC, on the report of Mohd.Usman(L.W.1-who died on 25.12.2006 and death certificate filed), dt.02.10.2004 with the averments that on the same day at about 10.30 A.M. 6 persons i.e. one Ghouse and others came in jeeps bearing Nos.AP-9-5825 and AP-28D-3554 to his house and trespassed forcefully and beat him and other family members and threatened to vacate the house or else to kill and by saying so, they tried to throw him out of the house along with household articles and destroyed some belongings and also threatened the neighbours who tried to rescue him.

2. The L.W.8-Investigating Officer registered said report of Mohd.Osman as Cr.No.824 of 2014 and took up investigation and filed chargesheet which discloses that during investigation he examined L.W.1-Mohd.Osman and recorded his statement and proceeded to the place of offence situated in Siramnagar, Yousufguda and found the accused persons and jeeps supra and caused enquires with A.1 who informed that the land belongs to him and as per the Court ad interim order, he tried to take the land into his possession from Mohd. Osman. On examination, the other accused A.2 to A.6 stated that they were brought by the A.1. Then the A.1 to A.6 were taken into custody and sent L.W.1-Mohd.Osman and his wife-L.W.2 to GSN hospital, SR Nagar. While so, on the same day, at 14.00hours, the A.1-Ghouse herein also lodged a complaint against L.Ws.1 and 2 (Mohd.Osman and his wife) alleging that they stabbed and caused bleeding injury to him while he was trying to take possession of his property despite having police protection order and ad interim order, and same was registered as a counter case in Cr.No.825 of 2004 u/ sec.324 IPC, and proceeded to the place of offence examined L.W.5-Syed Chand Pasha, L.W.6 Mohd.Naseer Ahmed Khan, conducted observation-cum-Seizure Panchanama of scene of offence and seized two vehicles

Maruthi gipsy bearing No.AP9/ R 5825 (black colour) and Mahindra Jeep bearing No.AP28D 3554 and also took photos of the scene of offence. L.W.8-Investigating Officer also examined L.W.2-Shahanaz Banu and eye witnesses L.W.3-Mohd Shoukath Ali, L.W.4 Gulam Dastagir and examined them and recorded their statements in part-II Case Diary. The L.W.1 also produced the Telephone Bill pertains to his telephone No.3832940, electricity bill pertains to electric meter of the premises bearing No.8-3-167/ 13/ 4/ 1, and certified copy of judgment in O.S.No.270 of 1999, dt.17.12.2003 wherein perpetual injunction was granted to L.W.1-Osman. The L.W.8 arrested the accused persons on 02.10.2004 and produced before the Court and were enlarged on bail. The Chargesheet further reveals that from the evidence collected, it is established that in the year 1994, L.W.1-Osman took the premises bearing No.8-3-167/ B/ 4/ 1(presently Municipal No.8-3-167/ 13/ 4/ 1) in plot No.18-A and 19-A in Sy.No.128/ 2 and 128/ 3 situated at Siramnagar, Yousufguda from one Sri G.Chenna Reddy through lease agreement. Since last 10 years, the L.W.1-Osman was in possession of the property and doing business and when said Chenna Reddy tried to evict him from the property, the L.W.1-Osman filed suit supra which was partly decreed by granting perpetual injunction restraining the Landlord and their men from interfering or disturbing peaceful possession and enjoyment of the property. While so on 02.10.2004 the above incident took place.

3. The contentions in the quash petition, impugning the Calander Case proceedings supra, are that A.1 is a senior citizen and a practicing Advocate in the High Court at Hyderabad, who is having property MCH D.No.8-3-167/ B/ 19/ A/ A at Sri Ram Nagar, Yousufguda, Hyderabad having agreement of sale from K.Balaiah in the year 1992, thereafter, when the A.1 insisted for execution of sale deed in his favour, his vendor K.Balaiah made unlawful demands and trespassed into the house to take illegal possession in collusion with Mohd.Osman by concocting a story that Mohd.Osman is a tenant in respect of the demise property bearing MCH No.8-3-167/ B/ 4/ 1, Sreeram Nagar, Yousufguda Hyderabad, in fact the same is bogus and fabricated by Mohd.Osman vide letter issued by GHMC, Deputy Commissioner, as such the A.1-Ghouse constrained to file a suit O.S.No.4387 of 2004 for specific

performance before the IV Junior Civil Judge, City Civil Court, Hyderabad and the same was decreed in his favour. On the date of incident i.e. on 02.10.2004 at about 10.30A.M. Mohd.Osman-the defacto-complainant along with his men stabbed the A.1 and injured at the premises supra and therefrom he gave a written complaint which was registered as Cr.No.825 of 2004 but the Sub Inspector of S.R.Nagar Police Station under the influence of said Osman not filed charge sheet against Osman but filed chargesheet against him (A.1). During pendency of the C.C.No.1301 of 2006, said Osman died. Thereafter the suit O.S.No.4387 of 2004 filed by the A.1 against his vendor K.Balaiah for specific performance was decreed by judgment, dt.02.08.2006. It is further submitted that though the copy of judgment in O.S.No.4387 of 2004 was filed in C.C.No.1301 of 2006, the Court was pleased to dispose of the case as civil in nature by orders dt.27.10.2006. Moreover, despite disposing of the case, the III Addl.CMM, once again issued summons to A.1 on 13.03.2016 which tantamounts to perverse and miscarriage of justice to the A.1. Hence, to allow the petition by quashing the proceedings in C.C.No.1301 of 2006.

4. Heard the learned counsel for the petitioners/ A.1 to A.6 and the learned Public Prosecutor representing the respondent/ State and perused the material on record.

5. Leave about the fact that the injunction suit filed by Mohd.Osman against the defendant-Landlord Chenna Reddy in O.S.No.270 of 99 decreed in his favour on 17.12.2003, which is prior to the alleged occurrence on 02.10.2004. Even coming to A.1 maintained a suit for specific performance against K.Balaiah pursuant to agreement, dt.20.07.1992 in O.S.No.4387 of 2004, where it was an exparte decree practically for right to file written statement of defendant- Balaiah was forfeited and from the evidence of A.1-Ghouse as P.W.1 with reference to Exs.A.1 to A.3 viz: sale deed of 1978, agreement of 1992 and tax payment receipt of 2002, with no cross-examination even by the defendant vide decree, dt.02.08.2006. On perusal of the judgment and decree, it is crystal clear that in the suit A.1-Ghouse sought relief for specific performance and also sought for possession of the property however it is observed in the judgment page-2

paragraph-2 that though the plaintiff (A.1 therein) sought relief of possession of the schedule property in the plaint, it is stated that he is in possession of the property since date of execution of the agreement of sale and decreed the suit with a direction to execute registered sale deed by the defendant-Balaiah within two months, but for the so called tax payment receipt of 2002, there is no material even for A.1-Ghouse to file pursuant to agreement of 1992 if at all in possession in the suit filed in 2004 that too in asking the relief of possession also for any proof of he is in possession, that itself clears and substantiates and supports the defacto-complainant since died, the claim of possession and alleged trespass by the A.1-Ghouse under the guise of decree for specific performance that too, the suit maintained by Mohd.Osman in O.S.No.270 of 1999 for injunction not to dispossess and it clearly shows there is a prima facie case of alleged offence of trespass and mischief and simple hurt in registration of the crime and taking cognizance for the same. Once such is the case, there is nothing from the police final report to quash said Calander Case proceedings that too without even filing any part-II Case Diary and without any record to say the claim of C.C.No.1301 of 2006 on the file of the III Addl.CMM was as if disposed of as civil in nature on 21.07.2006.

6. Having regard to the above and in the result, the Criminal Petition is dismissed however it will not prejudice any of the defence of the accused persons to raise before the trial Court including to file any application for deciding on own merits with reference to the part-II Case Diary and other material before trial Court. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:03.04.2019
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